Supreme court case of Chippewas of the Thames and Clyde River. Here is a quick recap of the day's events. Chippewas participated in an NEB hearing stating clearly that there was no Crown consultation process. Then it went public that the minister Chose not to participate in the crown process and used the NEB to serve the function of the Crown's duty to consult. Problem was, the NEB were not informed of that and neither were the delegates or First Nation's communities.The NEB Act section 58 was used as the reason they gave the NEB duty to consult but folks argue it conflicts with section 52 where the NEB must consider if Indigenous consultation was adequate. They can't do a process and then be responsible to determine if what they did was adequate. One judge clearly stated it's as if the NEB is acting as both the Judge and Jury. One of the Supreme Court Judges asked, if the Crown downloads the duty to consult on the NEB, can't the Crown review that decision themselves to see if it was a reasonable process? They were told they could but in this case that didn't happen. The Crown CHOSE not to participate, The NEB became the crown consultation but this decision was made AFTER the hearing of both Six Nation's and Clyde River.

Now with Clyde River it was even worse. They were denied a hearing process because the NEB chose to process the seismic testing as an Environmental Assessment process, not a hearing so the most folks could do was to submit letters of comment. Again the NEB were not informed they would be the ones with the duty to conduct Crown Consultation functions nor were Clyde River's members informed. The decision to download duty to consult was made AFTER the decision happened.

Three separate times the Supreme Court judges asked this simple question "WHO IS THE CROWN" and three times, there was no answer clearly given! By the end of the hearing, nobody had a clear idea of WHO the Crown is.

It is important to state that Parliament did not delegate anyone to do consultation. There was no Crown involved with any of the hearings of either Six Nation's or Clyde River.

Clyde River Environmental Assessment was used to replace Crown consultation but solicitors argued that just because the number or whales or seals is not altered, if the seismic blasting augments the behavior of the animals route changes making them inaccessible for hunting or fishing this is violating rights and it goes beyond the narrow scope of simply an environmental assessment for animals. The need is there to meet directly with the communities to understand their needs and the belief is there that the NEB lacks this expertise. Only the Crown can offer land exchanges and other remedies for "deep duty" issues.

The main issue people had with Clyde River was their Innu Rights yet not once was the word Rights mentioned in the NEB decision. Just before the decision, a 3000 page document was provided to the people of Clyde River to comment on. It was written in English. Most of the folks don't speak that language. No funding was provided to them that they could access a solicitor to help explain that document to them. Without Crown consultation, there was nobody to listen to the people, to understand their needs or to trust. They can't rely upon the NEB to act as Crown if they are the same ones making the decision. It's a conflict. So in the end, if the NEB finds Indigenous consultation did not take place adequately, the only recourse they have is to quash the decision of the NEB but if they were the ones to actually do the crown consultation, it's up to the Crown to review if that decision was reasonable. If not, again the decision should be cancelled or some alternative solutions should be worked in to see if the issues can be remedied.

The oil firm stand behind policy 58 saying that that one policy is justification to allow the NEB process to replace the Crown and that no review is needed. The decision should stand.

So that's it in a nutshell.